IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 62 of 1996

Date of Decision: 16th November, 2007

Braham Dass and others	Appellants
Versus	
Sushant Bali and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellants: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. G.D.Verma, Sr. Advocate, with Mr.B.C.Verma, Advocate, for respondents No. 1 (a) to 1(f).

Sanjay Karol, J. (Oral)

The appellants have assailed the judgment dated 14th February, 1996, passed by Additional District Judge (I), Kangra at Dharamshala, in RBT No. 196/94(91), 16/91, titled Brahma Nand v. Nanak, reversing judgment and decree dated 8th January, 1991 passed by Sub Judge, Ist Class, Court No.2, Una, in Civil Suit No. 96/87, RBT-71/89, titled as Nanak and another vs. Brahma Nand.

The predecessor-in-interest of appellants Shri Nanak and proforma respondent Shri Dullan (hereinafter referred to as plaintiffs) filed a suit for perpetual injunction restraining the predecessor in interest of respondents Shri Brahma Nand (hereinafter referred to defendant) from

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

interfering in land measuring 7 Kanals 2 Marlas, comprised in Khewat No.65 min, Khatauni No. 124, bearing Khasra No. 83(08), 114(08), 115(0-16), 152(0-9), 156(2-11) and 286 (2-10), situated in Tika Baruha, Mauja Chauki Maniar, Tehsil Bangana, District Una, on the premise that plaintiffs who were non-occupancy tenants are now owners in possession of the same by virtue of the provisions of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the Act).

The suit of the plaintiffs was resisted by the defendant on the ground that in exercise of their statutory right of resumption of land under the Act in terms orders dated 27.4.1987 passed by the Land Reforms Officer, out of the suit land measuring 3 Kanals 11 Marlas bearing Khasra No.114/1, 83/2, 115/1, 152, 156 (0-3 Mls, 0-2 Mls, 0-6 Mls, 0-9 Mls, 2-11 Mls), was directed to be resumed in favour of the defendant and was also put in possession of the same.

Based on the pleadings of the parties, the Court below framed the following issues:-

1) Whether the plaintiffs are owners in possession of the whole of the suit land, as alleged? OPP
2) Whether the plaintiffs are entitled to the relief of permanent injunction? OPP
3) Relief.

In support of their case, plaintiffs examined plaintiff No.1 Shri Nanak as PW-1, Shri Jagat Ram PW-2 and Shri Virbal PW-3. The defendant examined himself as DW-1, Bhagat Ram, DW-2, Amrit Lal, DW-3 and Rajinder Kumar DW-4. The plaintiffs through their witnesses got exhibited Ext.P-1, Ext.P-3, Ext.P4, Ext.P5 to Ext.P-9 (in order to show his long standing possession through revenue record). The defendant got

exhibited order dated 27.4.1987 Ext.D-1, rupat rojnamcha regarding delivery of possession Ext.D-2, Misal Haquiat (revenue record) for the year 1987-88 Ext.D3, Ext.P11, Ext.P12, Ext.P13 and Ext.P15 is the receipt issued by the Land Reforms Officer regarding the handing of the possession in pursuance of the orders.

The trial Court decreed the plaintiffs' suit in terms of its judgment and decree dated 8.1.1991 and restrained the defendant from interfering with the peaceful possession of the plaintiffs over the suit land. Considering Ext.P-5 to Ext.P-9 the plaintiffs were held to be in possession as non-occupancy tenants since long. Plea of ownership raised by defendant on the basis of order of resumption passed in his favour was, however, negatived for the reason that the plaintiffs were not associated with the resumption proceedings.

The defendant assailed the aforesaid judgment and decree, which was reversed by the learned Additional District Judge in terms of his judgment and decree dated 14.2.1996, which is subject of appeal in the present proceedings.

The first Appellate Court relying upon the documentary evidence came to the conclusion that the plaintiffs had failed to prove on record that Land Reforms Officer had obtained signatures of plaintiff No.1 by giving wrong assurances and the said order of resumption was based on such assurances. The appellate Court also came to the conclusion that the Civil Court did not have jurisdiction to entertain the suit and the same was not maintainable. The plaintiffs in fact had a remedy under the Act itself. Consequently, the suit filed by the plaintiffs was dismissed and the judgment passed by the trial Court was reversed.

The appeal was admitted on the following substantial questions of law:-

1) Whether after the attestation of mutation conferring the proprietary rights upon the non-occupany tenants, could Land Reforms Officer decide resumption proceeding under the provisions of H.P. Tenancy and Land Reforms Act?
2) Whether Land Reforms Officer was justified and acted in a legal manner in deciding the resumption proceedings on 27.4.1987 which were alleged to have been filed before him on 2.12.1975.
3) Whether the acts of statutory authorities envisaged by H.P. Tenancy and Land Reforms Act can be challenged before the Civil Courts which are not in conformity with the fundamental rights of Judicial Procedure and where the provisions of the Act had not been complied with?
4) Whether the impugned judgment and decree in appeal passed by Ld. First Appellate Court whereby the judgment and decree passed by the Ld. Trial Court has been reversed, is legal and factually sustainable in the eyes of law on the basis of material brought on record?

Learned counsel for the appellants has argued that vide Mutation No. 1884 dated 22.2.1981 proprietary rights were conferred upon the plaintiffs, therefore, no order of resumption on 27.4.1987 could have been passed in favour of the defendant. The defendant's application for resumption was not only barred by time but was also not instituted before the competent authority, therefore, any order passed thereupon was illegal and in view of the principle of law laid down in *Chuhniya Devi vs. Jindu*, 1991 (1) Sim.L.C. 223, Civil Court would have jurisdiction to entertain the suit filed by the plaintiffs. According to him, in any event the proceedings for resumption were not carried out in presence of the

plaintiffs by revenue authorities and the possession of the land stood continues to be with the plaintiffs.

Per contra, learned senior counsel appearing for the respondents has submitted that as per the law laid down by this Court in *Chuhniya Devi* (supra), this Court would have no jurisdiction to decide the lis. The order of resumption had to be assailed by the plaintiffs in accordance with the provisions of the Act which has not been done in the present case.

Before I deal with the respective contentions of the parties, it is necessary to notice certain undisputed facts borne out from the record; (i) the plaintiffs were non-occupany tenants of the defendant and were in continuous possession of the entire suit premises till 26.6.1987; (ii) on 21.2.1974 the Government enacted the Act; by virtue of provisions of Section 104 all rights, title and interest of land owners stood extinguished and vested in the tenants free from all encumbrances. This, however, was subject to the exception that the land owner had a prior right of resumption of land under the Act; (iii) The defendant filed an application Form LR-V for resumption before the Land Reforms Officer, Una on 2.12.1975 (iv) Vide Mutation No. 1884 dated 22.2.1981 the proprietary rights are conferred upon the plaintiffs by Land Reforms Officer; (v) In continuation of his earlier application, defendant moved an application for resumption on 21.1.1986 requesting the Land Reforms Officer to call the L.R-V forms and pass an order thereupon in accordance with the provisions of the Act, (vi) In the resumption proceedings, on 22.12.1989 statement of plaintiff No.1 Nanku was recorded consenting to the allowing of the defendant's application for resumption of land to the extent of 3 Kanals 11 Marlas;

(vii) Land Reforms Officer passed an order of resumption dated 27.4.1987 entitling the defendant to resume 3 Kanals 11 Marlas of land; (viii) Pursuant to the said order the possession of land was handed over to the defendant on 26.6.1987 and Mutation Ext.D-3 recording the same was entered in the revenue records.

It is a matter of record that the plaintiffs have not assailed statement dated 22.12.1989 consenting to the allowing of defendant's application. There is also no challenge to the order of resumption dated 27.4.1987 before the revenue authorities and the order of handing of possession though it is contended that possession is still with the plaintiffs. Even the defendant has not assailed the order of mutation dated 22.2.1981 effected in favour of the plaintiffs.

Perusal of Ext.DW-3/B the statement of plaintiff No.1 recorded on oath before the Land Reforms Officer is clear. He had consented to the passing of order of resumption in favour of defendant as under:-

> " Stated that I and my brother Dulam are cultivating the land of Brahma Nand, situate in Village Baruha as tenants. I agree to give the owner the land comprised in Khasra No. 114/1(0-3), 83 (0-8), 152(0-9), 156/211, but I am not prepeared to give any area to the owner out of Khasra No. 115 measuring 0-16 which adjoins the road. If the land out of Khasra No.115 has to be given then 3 Karam towards Khasra No.116 (illegible) may be allotted to Brahma Nand and the rest of the area be given to both of us (both the brothers) and in lieu of the aforesaid area, the land comprised in Khasra No. 83 may be allotted to us."

In the Civil suit plaintiff No.1 as PW-1 has stated that LR-V forms were not filed. He has, however, stated that he was called by the Tehsildar and the Tehsildar had informed him that he shall be made absolute owner of the land. He has admitted that he had affixed his thumb impression. In his cross-examination he has stated that he is not aware that in the year 1975 the defendant had filed an application for resumption. He has admitted that he had been called by the Tehsildar when both he and the defendant were present. Thus from his statement recorded on oath on 22.12.1989 it is clear that he has not disclosed the mutation dated 22.2.1981 carried out in his favour nor that the possession of part of the suit land was handed over to the defendant in terms of orders dated 26.6.1987. During trial, he has not stated as to how the proceedings of resumption were illegal or which of the procedure required under law was not complied with.

The defendant had produced his witnesses to show that the order of resumption was passed after due compliance of provisions of law and in the presence of plaintiffs. Through the statements of Amrit Lal (DW-3) and Rajinder Kumar (DW-4) (both the witnesses from the revenue department) it has been proved that the defendant had moved an application for resumption, which was decided in accordance with law after plaintiff No.1's statement was recorded and the possession in terms of order was also handed over to the defendant.

The right of the non-occupancy tenant to be vested with all rights in the land of the land owner, free from all encumbrances is subject to the owner's right of resumption is stems out of the provisions of Section 104 of the Act. Under the Act both the orders i.e. order conferring

proprietary rights and the order of resumption required to be passed by the Land Reforms Officer. The Land Reforms Officer was well within his power to pass an order of resumption. Passing an order conferring proprietary rights upon the plaintiffs prior to the order of resumption would make no different as the same was done during the pendency of defendant's application for resumption.

The fact that the defendant had moved an application for resumption on 2.12.1975 is evident from Ext.P-13 (Form V). Reminder thereof was made in terms of application Ext.DW-4/A dated 21.1.1986 which was finally decided only on 27.4.1987. The pendency of the application or non-disposal of the same by the statutory authorities cannot be a ground to defeat the legitimate claim and statutory right of the defendant. There is nothing on record to show that it was the defendant, who had delayed the resumption proceedings.

Learned counsel for the appellants has argued that Ext.P-13 was not instituted before the competent authority and, therefore, orders passed thereupon were not in conformity with the provisions of the Act. Perusal of Ext.P-13 would show that the same was filed before Land Reforms Officer, Una, whereas the concerned Officer was the Land Reforms Officer, Bangana. Both Una and Bangana are in the same District. The plaintiffs have taken this objection for the first time before this Court. There is nothing on record to even remotely suggest that such an objection had been taken either before the revenue authority or in proceedings before the Civil suit during trial. Be that as it may be, it has come on record that the defendant's reminder Ext.DW-4/A was filed before the Land Reforms Officer, Bangana, who passed an order on the

basis of the consent given by the plaintiffs. In any case, it is not an illegality which would defeat the statutory rights of the parties. It is not a case where an application was filed before an authority having no jurisdiction at all to entertain an application under the Act.

Learned counsel has further submitted that in view of Rule 21 of the H.P. Tenancy and Land Reforms Rules, 1974, (hereinafter referred to as the Act) the application of resumption could have been filed within one month from the date of commencement of the Rules. According to him, the Rules were notified on 3.10.1975, whereas the application was filed on 2.12.1975. Therefore, the order of resumption was not passed in compliance with the provisions of the Act. The trial Court has already considered this aspect of the matter and has held that the date for filing the LR V Form was extended by the Government upto 31.12.1975. The plea is, therefore, not acceptable. In any event the plea of limitation is deemed to have been waived with the consent given by the plaintiff No.1.

The only other contention of the learned counsel for the plaintiffs with regard to non-compliance with the fundamental principles of judicial procedure or provisions of the Act is that the plaintiffs were not associated in the proceedings of resumption. In the preceding paragraphs, the sequence of events resulting into the passing of the order of resumption have been noticed. Plaintiff No.1 had not only consented to the passing of the order but even in the civil suit, on oath he has stated that he was called by the Tehsildar when both he and the defendant were present. Even in the present proceedings, he has not assailed his statement on oath made before the Land Reforms Officer. Therefore, it cannot be

said that the plaintiffs were not associated with the proceedings of resumption.

The fact that even the defendant did not inform the authority about the proprietary rights being conferred upon the plaintiffs cannot by itself be a ground for defeating his statutory right, particularly, when the application for resumption was pending before the revenue authorities. Admittedly, the plaintiffs were non-occupancy tenants and their right of ownership flowed under the Act itself.

The plaintiffs have got statutory remedy of appeal under Section 114 of the Act and in view of provisions of Section 112 of the Act the validity of proceedings or orders passed under the Act cannot be called in question in any Civil Suit. In the Civil Suit both the order conferring proprietary rights and also order of resumption passed under the Act necessarily in issue. Therefore, in my view, the first appellate Court rightly came to the conclusion that the Civil suit filed by the plaintiffs was not maintainable.

In *Shankar vs. Smt. Rukmani and others,* 2003 (1) Shim. L.C. 300, it has been held as under:-

> "9. After analyzing the judgment in *Chuhniya Devi v. Jindu Ram's case (supra)*, we have no doubt that the jurisdiction of the Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant

arises independent of the proceedings under the Act, the Civil Court has the jurisdiction."

In view of the facts and circumstances of the case, it cannot be said that the passing of the order of resumption is not in conformity with the fundamental principles of judicial procedure and the provisions of the Act.

The dispute about the conferment of proprietary rights or resumption arises out of the proceedings under the Act and the orders passed by the authorities thereunder.

The findings of fact recorded by the first appellate Court, while reversing the judgment of the trial Court, are totally sustainable in law and are borne out from the material on record.

Substantial questions of law are answered accordingly.

For the foregoing reasons, the appeal is dismissed. No order as to costs.

November 16, 2007
(C)

(Sanjay Karol)
Judge.